HONOURABLE SHRI G. S. SINGHVI

THE CHIEF JUSTICE

AND

HONOURABLE SHRI JUSTICE

R. SUBHASH REDDY

WRIT APPEAL Nos.1266 AND 1403 OF 2002

W.A.No.1266/2002

Between:

The District Collector,

Hyderabad District, Hyderabad

and another … Appellants

AND

Syed Shah Ali Akbar Nizamuddin Hussain

and others

… Respondents

Counsel for appellants: Sri C.V. Mohan Reddy

Advocate-General

Counsel for respondent No.1: Shri P. Gangaiah Naidu

Counsel for respondents

2 to 204: Shri M.V. Bharathi

Counsel for respondent

No.205: Shri Ghanta Rama Rao

Counsel for respondent

No.206: Shri A.M. Qureshi

W.A.No.1403 of 2002

Between:

The All India Federation of

Minorities Welfare Association,

Represented by its Secretary

and others … Appellants

AND

Syed Shah Ali Akbar Nizamuddin Hussaini

and others … Respondents

Counsel for appellants: Shri M.V. Bharathi

Counsel for respondent

No.1: Shri P. Gangaiah Naidu

Counsel for respondent

Nos.2 to 4: Shri C.V. Mohan Reddy

Advocate-General

Counsel for respondent

No.5: Shri A.M. Qureshi

:: COMMON JUDGMENT:

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21st March, 2006.

Per R.Subhash Reddy, J.

These appeals are directed against order dated 8-11-2001 passed by the learned Single Judge in Writ Petition No.34062 of 1998, whereby he quashed notice dated 25-11-1998 issued by Deputy Director, Survey and Land Records, Hyderabad for survey and demarcation of land bearing T.S.Nos.11, 18, 20, 26, 28, 30, 33, 34 and 38 (Old Sy.Nos.18 and 19) and T.S.Nos.7, 25 and 60 to an extent of 31,728 Sq.mtrs. and Ac.1.00 respectively situated at Nampally, Hyderabad.

While Writ Appeal No.1266 of 2002 has been filed by District Collector, Hyderabad District and Deputy Director, Survey and Land Records, Hyderabad District, who were respondent Nos.2 and 3 in the writ petition, Writ Appeal No.1403 of 2002 has been filed by All India Federation of Minorities Welfare Association and its members, respondents 4 to 203 in the writ petition, who are the occupants of the disputed land.

For the sake of convenience, we have taken the facts from Writ Appeal No.1266 of 2002.

Respondent No.1 – Syed Shah Ali Akbar Nizamuddin Hussain, who claims to be the Sajjada Nasheen and Mutawalli of Dargah Syed Shah Khamoosh situated at Nampally, Hyderabad filed Writ Petition No.346 of 1990 for issuance of a writ declaring the action of respondents 1, 2 and 4 therein to issue patta certificates to the occupants (tenants) of Bharatnagar and Dargah Syed Shah Khamoosh, Nampally as illegal and void and to restrain them from issuing patta certificates in respect of Dargah lands. That petition was an off shoot of an earlier writ petition being Writ Petition No.5804 of 1980 filed by his father questioning proceedings dated 12-9-1980 of Collector, Hyderabad District proposing to grant pattas to the occupants of the Dargah lands, wherein the proceedings impugned therein were set aside and it was made clear that it was open to the Government to grant patta certificates only in respect of government land under encroachment and not in respect of the land covered by the wakf and that too after demarcation of the land. The writ petition filed by respondent No.1 was disposed of by the learned Single Judge vide his order dated 10-10-1995. The relevant extracts of that order read as under:-

> “It is clear from the rival contentions mentioned above that this writ petition involves disputed questions as to title and also as to the nature

> and identity of the lands which required examination of evidence in detail. I am afraid it is not possible to adjudicate these disputed questions in a writ petition. It will be open for the parties to agitate these questions in appropriate proceedings before a competent court. It is seen from the counter affidavit filed on behalf of respondents 1, 2 and 4 that no patta certificates have been issued as yet and socio-economic survey also is not conducted. In that sense, the writ petition can be said to be premature. Admittedly the entire land in Survey Nos.18 and 19 is not wakf property. Even though according to the 'Muntakab', only some land within the specified boundaries of the Dargah Sheriff is shown as endowment property. It may not be difficult for the authorities i.e., respondents 1, 2 and 4 to demarcate the Dargah land from the rest of the land in Sy.Nos.18 and 19 as directed by this Court in Writ Petition No.5804 of 1980. Having regard to the above facts and circumstances of the case, I think it will be just and proper to direct respondents 1, 2 and 4 to have the land properly demarcated before proceeding to issue patta certificates to the eligible occupiers of government land."

After some time, respondent No.1 filed Writ Petition No.12383 of 1996 questioning acquisition of land measuring 3188 Sq.mtrs. situated in Nampally village, Musheerabad Mandal, Hyderabad District. He pleaded that the land proposed to be acquired belongs to Dargah of which he was Sajjada Nasheen and Mutawalli. He relied on order dated 10-10-1995 passed in Writ Petition No.346 of 1990 and claimed that without demarcating the land belonging to the Dargah, the concerned authorities were not entitled to resort to acquisition proceedings. That petition was disposed of by the learned Single Judge holding that the declaration under Section 6 of the Land Acquisition Act was invalid being contrary to the directions given by the court in the earlier writ petition. The learned Single Judge set aside the declaration made under Section 6 of the Land Acquisition Act and directed the respondents to hold enquiry under Section 5-A and also demarcate the land belonging to the writ petitioner before taking action for fresh acquisition.

In Writ Petition No.34062 of 1998, respondent No.1 questioned notice dated 25-11-1998 issued by Deputy Director of Survey and Land Records by asserting that the land had already been surveyed on 22-6-1996 and as such, there was no justification to make fresh survey. He also questioned the proposed grant of patta to the non-petitioners in the writ petition.

In the affidavit filed on behalf of the present appellants, who were impleaded as non-

petitioners 2 and 3 in the writ petition, it was averred that the survey of slums in the twin cities was taken up by the Municipal Corporation of Hyderabad and the slums known as Bharathnagar and Dargah Shah Khamoosh were identified and socio-economic survey was conducted for issuing patta certificates for development of the slums. It was further stated that the petitioner himself had filed suit bearing O.S.No.454 of 1970 claiming therein that the Dargah Shah and the shrine are not wakf properties and sought injunction to restrain the Wakf Board from demanding any contribution and statement of account pertaining to the income and expenditure of the institution. The counter affidavit of the appellants also made reference to Writ Petition Nos.5804 of 1980 and 346 of 1990 and orders passed by this Court which empowered the competent authority to grant patta certificates in respect of the government land after demarcation. According to the appellants, notice dated 25-11-1998 issued by Deputy Director of Survey for demarcation of property of Dargah Shah Khamoosh was in compliance with the directions issued by this Court in Writ Petition No.346 of 1990. It was reiterated that when the petitioner himself filed suit by asserting that the property is not wakf property, it was not open to him to question the exercise undertaken for survey of the land.

The private respondents, who were impleaded as non-petitioners in the writ petition filed by respondent No.1 also filed counter affidavit asserting therein that they are in possession of the land for the last many decades and they have acquired the right to continue over it. They further pleaded that the land in question is government land and neither the Wakf Board nor the Dargah has any right over it.

The learned Single Judge granted relief to the writ petitioner (respondent No.1 herein) by observing that in view of the survey done on 22-6-1996, there was no justification to undertake fresh survey. The learned Single Judge referred to the orders passed in Writ Petition Nos.5804 of 1980, 346 of 1990 and 12384 of 1996 and held that there was no necessity of fresh survey.

Sri C.V. Mohan Reddy, learned Advocate General appearing for the appellants in Writ Appeal No.1266 of 2002 assailed the order of the learned Single Judge by arguing that he committed a serious error by quashing the exercise initiated by the department for survey and demarcation of the disputed land. He submitted that the private respondents have encroached upon the government land and not the land belonging to the wakf or Dargah and the department has initiated process for survey and demarcation of allotment of pattas to the occupants. Learned Advocate General

referred to the town survey conducted and notified through Hyderabad District Gazette No.38, dated 29-6-1976 under Section 13 of the Andhra Pradesh Survey and Boundaries Act, 1923 and submitted that the same will be deemed to have become final because no suit had been filed within three years from the date of notification as specified under Section 14 of the Andhra Pradesh Survey and Boundaries Act. Learned Advocate General also emphasised that the earlier survey of the land has nothing to do with the demarcation and, therefore, the learned Single Judge should not have nullified the notice issued by the Deputy Director for implementation of the directions given by the Court.

Sri M.V.Bharathi, learned counsel for the appellants in Writ Appeal No.1403 of 2002 supported the learned Advocate General and argued that his clients are entitled to grant of pattas in respect of the land which is in their possession for the last many decades. Sri Bharathi submitted that respondent No.1 does not have any locus over the land in dispute and the learned Single Judge gravely erred by quashing notice dated 25-11-1998 issued by the Deputy Director.

Sri P.Gangaiah Naidu, learned Senior Counsel for respondent No.1 defended the order under challenge and argued that the land in question is a notified land belonging to the Wakf and the State Government does not have any right to interfere with the same. He pointed out that the notification issued by the Government notifying the disputed property as wakf property has become final and, therefore, the same cannot be subjected to fresh survey. Sri Naidu then argued that the private respondents are tenants of the wakf and they do not have any vested right over the land. It is also the submission of the learned counsel that the orders passed in the earlier litigation have become final and, therefore, the Deputy Director had no jurisdiction to issue notice for fresh demarcation.

We have considered the respective submissions and gone through the records. Undisputedly, Writ Petition No.5804 of 1980 filed by the father of respondent No.1 questioning the proposed grant of pattas peursuant to order dated 12-9-1980 passed by District Collector, Hyderabad was allowed and the order impugned therein was quashed with the direction that before taking steps to issue patta certificates in respect of the land, a clear demarcation of the area should be made and it must be clearly established that the land in question is a government

land and it shall be open for the Government to grant pattas only in respect of the government lands. The second writ petition (Writ Petition No.346 of 1990) filed by the writ petitioner (respondent No.1 herein) with similar prayer was disposed of by the Court directing the respondents therein to have the land property demarcated before proceeding to issue patta certificates to the eligible occupiers of government land. In the third writ petition filed for quashing the acquisition proceedings, which was registered as Writ Petition No.12383 of 1996, the learned Single Judge quashed the declaration issued under Section 6 of the Land Acquisition Act, but liberty was given to the respondents therein to proceed with fresh acquisition after undertaking demarcation. After disposal of the writ petition, Deputy Director, Survey and Land Records issued notice dated 25-11-1998, which reads as under:-

"Office of the Deputy Director,
Survey and Land Records,
Hyderabad District.

NOTICE

No.B2/1686/95 Dated:25-11-1998

Sub:- Demarcation of Dargah Shah Khamoosh situated at
Nampally, Hyderabad as per the orders of Hon'ble High Court
of A.P., Hyderabad in W.P.No.346/90.

Ref:- Representation of Sir Syed Mahboob Ali, President, Upper
Sevak Nagar, Dargah Shah Khamoosh, Nampally, Hyderabad,
dated 19-11-1998.

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Please take notice that the demarcation of the Daragah Shah Khamoosh will be taken up by Sri B.Nawaz Reddy, Deputy Inspector of this office on 28-11-1998 at 10.00 a.m.

Hence, you are requested to be present on the spot on ground on the said date and time without fail.

DEPUTY DIRECTOR,

SURVEY AND LAND RECORDS,

HYDERABAD DISTRICT.

To

Sri Syed Mahboob Ali, President,

Upper Sevak Nagar, Dargah Shah

Khamoosh, Nampally,

H.No.5-6-776/1, Dargah Shah Khamoosh,

Nampally.

Copy to Sri Syed Akbar Nizamuddin Hussain, Sajjada Nasheeen & Ukhawarth Dardah Shaj Khamoosh, Nampally, Hyderabad with report to be present on the spot on ground without fail."

From a reading of the above reproduced notice, it becomes clear that respondent No.1 was directed to remain present for the purpose of demarcation of the land in compliance of the orders passed by this Court earlier in Writ Petition No.346 of 1990. The survey which was conducted earlier on 22-6-1996 has nothing to do with the demarcation of the land. The survey and demarcation are totally different and distinct. At no point of time, demarcation was undertaken of the land possessed by the private respondents for determining which portion belongs to the Dargah and which portion belongs to the Government. Therefore, the exercise initiated by the Deputy Director for demarcation of the land cannot be faulted. What was undertaken earlier was only survey and in view of the nature of the dispute, demarcation of the lands belonging to Dargah/Wakf and the Government was necessary. In the earlier rounds to litigation, this Court had categorically held that demarcation has to be done to identify the property belonging to the Dargah and the Government and only after demarcation, further proceedings for acquisition or grant of pattas have to be taken. Therefore, the view taken by the learned Single Judge that exercise of

demarcation initiated by the Deputy Director is contrary to the earlier orders of the Court cannot be upheld. The observations made by the learned Single Judge that demarcation cannot be done in view of notification dated 16-8-1984 is also erroneous. It was the case of the respondents that the entire land covered by Survey Nos.18 and 19 is not the wakf property and the land in occupation of the private persons is the government land. In that view of the matter, merely because the appellants have not questioned notification dated 16-8-1984, the same cannot be a ground to prevent the demarcation pursuant to the directions issued by this Court in Writ Petition No.346 of 1980. In any event, unless demarcation is made, it is not possible even to know as to which part of the land belongs to wakf or Dargah. When a notice is issued in compliance of the directions issued by this Court, it is not open to the writ petitioner (respondent No.1) to question the same. The findings recorded in Writ Petition No.346 of 1990 will operate as res judicata and respondent No.1 cannot seek similar relief and stall implementation of the directions issued by this Court in Writ Petition No.346 of 1990.

The judgment of the Supreme Court in **Sayyed Ali v. Andhra Pradesh Wakf Board, Hyderabad** on which reliance has been placed by Sri P.Gangaiah Naidu is of no help to the case of his client. In that case, the Supreme Court held that Tahsildar cannot adjudicate upon the character of wakf property as the same can be decided in the manner provided in Section 6 of the Wakf Act. The facts of the present case are entirely different and the question involved in the writ petition filed by the respondent No.1 was also different.

For the reasons mentioned above, the order of the learned Single Judge is set aside and Writ Petition No.34062 of 1998 is dismissed. There shall be no order as to costs.

R.SUBHASH REDDY, J.

21st March, 2006.

(cav)

G.S.SINGHVI, C.J.

VR/ARS